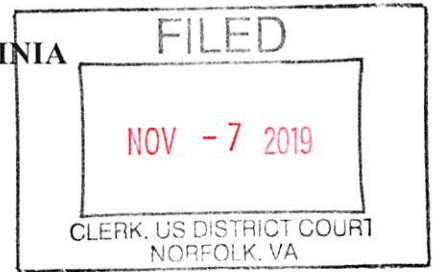


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



CHRISTOPHER DURENE HARPER, #1490667,

Petitioner,

v.

Action No. 2:18cv522

HAROLD W. CLARKE,
Director of the Virginia Department of Corrections,

Respondent.

FINAL ORDER

Petitioner Christopher Durene Harper ("Harper"), a Virginia inmate, has submitted a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. ECF No. 1. Harper alleges his federal rights were violated when he was convicted in the Circuit Court for the City of Norfolk of conspiracy, three counts of robbery, three counts of abduction with intent to extort money, and six counts of use of a firearm in the commission of a felony. ECF No. 1 at 1–2, 5. As a result of these convictions, Harper was sentenced on December 4, 2015.¹ ECF No. 1 at 2, 5.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Local Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report and

¹ Following Harper's direct appeal, on November 2, 2017, the trial judge vacated findings of guilt for one count of abduction and one firearm count, and resented Harper to 30 years.

recommendation, filed October 6, 2019, recommends that respondent's motion to dismiss be denied, and the petition for a writ of habeas corpus be dismissed without prejudice. ECF No. 16.

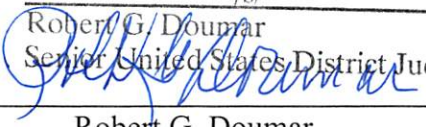
Harper was advised of his right to file written objections to the findings and recommendations made by the magistrate judge. The Court has received no objections to the report and recommendation, and the time for filing objections has expired.

The Court does hereby adopt and approve the findings and recommendations set forth in the report and recommendation since the Petitioner has not exhausted his state court remedies. It is, therefore, **ORDERED** that respondent's motion to dismiss, ECF No. 11, is **DENIED** at this time, and the petition for a writ of habeas corpus, ECF No. 1, is **DISMISSED WITHOUT PREJUDICE**. It is further **ORDERED** that judgment be entered in favor of respondent.

Finding that the basis for dismissal of Harper's section 2254 petition is not debatable, and alternatively finding that Harper has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Harper is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Harper intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Final Order. Harper may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

The Clerk shall mail a copy of this Final Order to Harper. A copy of this Final Order shall be served on the respondent and the Attorney General by CM/ECF pursuant to their Agreement on Acceptance of Service with the Court.

/s/
Robert G. Doumar
Senior United States District Judge

Robert G. Doumar
United States District Judge

Norfolk, Virginia
November 7, 2019